

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

TODD WOLF,

Plaintiff,

Case No. 23-cv-149

v.

CITY OF SHEBOYGAN, et. al.,

Defendants.

[PROPOSED] ORDER ON PLAINTIFF’S MOTION TO COMPEL

This matter comes before the court on the Plaintiff’s motion to compel. (ECF No. 77) Plaintiff seeks an Order compelling the City Defendants to permit discovery in relation to (1) Attorney Jill Hall’s investigation, including all communications, documents provided, work product and draft reports; (2) communications with Attorney James Macy between November 2022 and February 2023 that relate to the subject of the January 4, 2023 closed session meeting; and (3) communications with City Attorney Adams relating to Plaintiff’s leave, directives issued to him while on leave, investigation and termination. (*See* ECF No. 77, Pp. 7-9, 12-14, 16-20)

On February 9, 2024, prior to the filing of the Motion to Compel, the City Defendants offered to agree to a limited waiver of privilege in an effort to resolve the dispute between the parties. (ECF No. 81, P. 3; ECF No. 82, Ex. S) After consideration of the submissions and oral arguments of the parties counsel, the Court finds that the City Defendants proposed limited waiver of attorney client privilege is fair and reasonable.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Compel is GRANTED in part and DENIED in part as follows:

Attorney Hall investigation.

The order GRANTING Plaintiff's Motion to Compel discovery in relation to Attorney Hall's investigation is limited to:

- All notes reflecting communications between Attorney Hall and any city employee or official or other third-party witness; and
- All documents provided to/from Attorney Hall in relation to the investigation she was hired to complete on November 14, 2022.

Plaintiff's Motion to Compel disclosure of Attorney Hall's work product is DENIED in its entirety.

Attorney Macy communications.

The order GRANTING Plaintiff's Motion to Compel discovery regarding Attorney Macy communications is limited to those communications with Attorney Macy which actually occurred during the January 4, 2023, Common Council closed session meeting, with one caveat. Based on their advice of counsel defense asserted in paragraph 28 of City Defendants' Answer to Plaintiffs' Amended Complaint, the City Defendants have agreed to an "at-issue" waiver of attorney client privilege related to Attorney Macy's advice regarding Plaintiff's termination irrespective of when those communications occurred.

Plaintiff's Motion to Compel disclosure of Attorney Macy's work product is denied in its entirety.

City Attorney Adams communications.

The order GRANTING Plaintiff's Motion to Compel discovery in relation to communications between City Attorney Adams and the Common Council is limited to:

- Aug. 22, 2022 alleged racial slur incident
- Nov. 7 and Nov. 28, 2022 letters issued to Plaintiff
- Plaintiff's discipline (proposed PIP/prior discipline)
- Plaintiff's administrative leave
- The Hall investigation
- Plaintiff's termination.

The order GRANTING Plaintiff's Motion to Compel discovery in relation to communications made during the October 17, 2022, October 24, 2022, November 7, 2022 and January 4, 2023 Common Council closed sessions is limited to:

- Communications made during the closed session meetings by the City Attorney, Mayor, Alderpersons, Attorney Macy or Attorney Hall
- Notes taken by City Attorney Adam's designee on 10/24/2022; notes taken by the City Clerk's designee on 11/7/2022 and notes taken by the Alderpersons during any of the four closed sessions.

Plaintiff's Motion to Compel is DENIED in all other respects.

Dated at Milwaukee, Wisconsin this ___ day of March, 2024.

WILLIAM E. DUFFIN
U.S. Magistrate Judge

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